



June 7, 2000

Mr. Edward M. Sosa
First Assistant County Attorney
County of El Paso
500 East San Antonio, Room 203
El Paso, Texas 79901

OR2000-2226

Dear Mr. Sosa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136176.

The El Paso County Medical Examiner (the "medical examiner") received a request for a copy of an autopsy report related to a murder investigation. You state that a copy of the postmortem examination report has been released to the requestor in redacted form. You also state that the toxicology reports have been released to the requestor. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. Open Records Decision No. 525 (1989). Section 11 has been amended to provide that

[t]he records [of an autopsy] are subject to *required* public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76th Leg., R.S., ch 607, § 2. This amendment took effect on September 1, 1999. *Id.* § 3. We conclude that the medical examiner must release the entire autopsy report to the requestor.¹ As section 11 of article 49.25 of the Code of Criminal Procedure is dispositive of the information at issue, we do not address your claim under section 552.108. *See* Open Records Decision No. 525 (1989) (Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹The submitted documents do not appear to include photographs or x-rays taken during the autopsy. To the extent that such photographs or x-rays exist, they must be withheld pursuant to article 49.25 of the Code of Criminal Procedure.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 136176

Encl. Submitted documents

cc: Mr. Patrick C. McDonnell
El Paso Times
P.O. Box 20
El Paso, Texas 79999
(w/o enclosures)